

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA ex rel.	:
JOHN A. WOOD, and on behalf of the	:
STATES of CALIFORNIA, COLORADO,	:
CONNECTICUT, DELAWARE,	:
FLORIDA, GEORGIA, HAWAII,	:
ILLINOIS, INDIANA, LOUISIANA,	:
MASSACHUSETTS, MICHIGAN,	:
MINNESOTA, MONTANA, NEVADA,	:
NEW HAMPSHIRE, NEW JERSEY,	:
NEW MEXICO, NEW YORK, NORTH	:
CAROLINA, OKLAHOMA, RHODE	:
ISLAND, TENNESSEE, TEXAS,	:
VIRGINIA, WISCONSIN and the	:
DISTRICT OF COLUMBIA,	:
	:
Plaintiffs,	:
	:
v.	:
	:
ALLERGAN, INC.,	:
	:
Defendant.	:
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10 CV 5645 (JMF)

**RELATOR’S NOTICE OF MOTION FOR LEAVE TO FILE
THIRD AMENDED COMPLAINT AND INCORPORATED
MEMORANDUM OF LAW IN SUPPORT THEREOF**

Plaintiff, the *qui tam* relator John A. Wood (“Relator”), by and through his undersigned counsel, hereby respectfully moves this Court for an Order for leave to file a Third Amended Complaint to supplement and amend his Second Amended Complaint. A copy of Relator’s proposed Third Amended Complaint is attached hereto as Exhibit 1.¹

Prior to filing this Motion, the undersigned advised counsel for the United States and counsel for the state government plaintiffs of the Relator’s intent to seek leave to amend, and

¹ Attached as Exhibit 2 is a redlined version of the Third Amended Complaint, showing the changes from the Second Amended Complaint.

provided the United States and the states with a draft of the Third Amended Complaint. The United States and the states have advised that they take no position on the Motion.

I. FACTUAL BACKGROUND

Proceeding on behalf of the United States pursuant to the federal False Claims Act, 31 U.S.C. §§ 3729, *et. seq.*, as well as on behalf of 26 states and the District of Columbia, Relator filed his initial Complaint under seal on July 26, 2010. Subsequently, Relator filed two Amended Complaints under seal; the first on August 19, 2010, and the second on March 15, 2012, to reflect additional investigation by Relator and his counsel. After the United States declined to intervene, the Second Amended Complaint was ordered unsealed on March 21, 2016. Dkt. 24. Relator now seeks leave to file a Third Amended Complaint, to further refine and supplement his claims and allegations based on his continuing investigation.

II. ARGUMENT

A. Leave to Amend Should be Granted

Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleading at any time by leave of the court. “Leave to file an amended complaint ‘shall be freely given when justice so requires,’ Fed. R. Civ. P. 15(a), and should not be denied unless there is evidence of undue delay, bad faith, undue prejudice to the non-movant, or futility.” *Milanese v. Rust-Oleum Corp.*, 244 F.3d 104, 110 (2d Cir. 2001) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Accord, e.g., *United States ex rel. Kirk v. Schindler Elevator Corp.*, 926 F. Supp. 2d 510 (S.D.N.Y. 2013).

Here, no reason exists to deny Relator the opportunity to amend the complaint. The amendment is not the result of bad faith or dilatory motive. Relator and his counsel have been diligently investigating this case and are acting swiftly to refine and supplement the claims

asserted. At present, the case has been unsealed, and the defendant has not yet been served with the operative complaint. *See* Fed. R. Civ. P. 4(m).

In addition, the failure to cure deficiency and futility of amendment factors are inapplicable in the circumstances here. The Court has not even been presented with a challenge to the sufficiency of the claims alleged. Moreover, there is no evidence of prejudice or undue delay. As this *qui tam* action had been under seal since inception, defendant has yet to be served with a complaint, let alone undertaken effort to respond to the claims alleged. *See Fresh Del Monte Produce, Inc. v. Del Monte Foods, Inc.*, 304 F.R.D. 170, 174 (S.D.N.Y. 2014) (holding that “[i]n gauging prejudice,’ a court considers, ‘among other factors, whether an amendment would require the opponent to expend significant additional resources to conduct discovery and prepare for trial or significantly delay the resolution of the dispute’”) (quoting *Ruotolo v. City of New York*, 514 F.3d 184, 192 (2d Cir. 2008)). *See also Refco Grp. Ltd., LLC v. Cantor Fitzgerald, L.P.*, No. 13 Civ. 1654 (RA)(HBP), 2015 U.S. Dist. LEXIS 88121, at *18-19 (S.D.N.Y. July 6, 2015) (acknowledging “the liberal standard of Rule 15(a)” and holding that “[d]elay alone, in the absence of bad faith or prejudice, is not sufficient reason for denying a motion to amend”).

III. CONCLUSION

For the forgoing reasons, Relator respectfully requests leave to file a Third Amended Complaint.

Dated: May 13, 2016

Respectfully submitted,

/s/ Sherrie R. Savett

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